IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 29TH MAY 2007 / 8TH JYAISHTA 1929

WA.No. 1104 of 2007()

AGAINST THE JUDGEMENT IN WPC.5585/2006 Dated 25/07/2006
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APPELLANT/PETITIONER.

ALEX VARGHESE, ADVOCATE,
PULICKAKUZHIYIL HOUSE, KUMBANAD.P.O, VIA.THIRUVALLA
PATHANAMTHITTA, KERALA STATE, 689 547.

BY ADV. SRI.V.PHILIP MATHEW

RESPONDENTS/RESPONDENTS:
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1. THE CHIEF PASSPORT OFFICER,
GOVERNMENT OF INDIA, MINISTRY OF EXTERNAL AFFAIRS,
CPV DIVISION, PATIALA HOUSE ANNEXE, TILAK MARG,
NEW DELHI-110 001.

2. PASSPORT OFFICER,
MINISTRY OF EXTERNAL AFFAIRS, GOVT. OF INDIA,
PASSPORT OFFICE, S.N.S.M.BUILDING, KAITHAMUKKU,
THIRUVANANTHAPURAM-24.

3. UNION OF INDIA, REP. BY SECRETARY,
MINISTRY OF EXTERNAL AFFAIRS, NEW DELHI.

4. PROTECTOR OF EMIGRANTS,
RAVIPURAM, KOCHI.

BY ASSISTANT SOLICITOR GENERAL SRI P. PARAMESWARAN NAIR.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 29/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

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W.A. No. 1104 OF 2007

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Dated this the 29th May, 2007

J U D G M E N T

H.L. Dattu, C.J.:

This appeal arises out of the judgment delivered by the learned single Judge in W.P.(C) 5585 of 2006 dated 25th July, 2006.

2. Brief facts are:

The petitioner had filed an application for renewal of his passport The application is dated 26.12.2002. The Passport Officer has renewed the passport facilities to the petitioner. Thereafter, the Passport Officer had initiated proceedings under the Passport Act, by his notice/order dated 07.11.2002,

Aggrieved by the said order, the petitioner had filed an appeal before the Chief Passport Officer, as provided under section 11 of the Passport Act, 1967 ('Act' for short). The Chief Passport Officer had disposed of his appeal by his order dated 27.03.2006 directing the Passport Officer to restore passport facilities to the petitioner after imposing a penalty of Rs.5,000/- for suppression of material information regarding the criminal case pending against him.

3. Aggrieved by the above said two orders, the petitioner was before this court in W.P.(C) 5585 of 2006. Learned single Judge has rejected the Writ

Petition by his order dated 25.07.2006. That is how, the petitioner is before us in this appeal.

4. Learned counsel for the appellant, apart from others, would contend that the Chief Passport Officer, who is the appellate authority ought not to have decided the appeal filed by the petitioner , against the order passed by the Passport Officer, without affording an opportunity of being heard to the appellant. In support of the said contention, learned counsel brings to our notice the proviso to sub section (5) of Section 11 of the Act.

5. Learned counsel for the respondents sought to justify the impugned order.

6. Section 11 of the Act provides for filing of appeal , if , for any reason, a person is aggrieved by the orders passed by the Passport Officer. In the instant case, such an appeal was filed by the appellant being aggrieved by the orders passed by the Passport Officer dated 07.11.2002. The appellate authority has disposed of the appeal, but without affording an opportunity of being heard. The proviso appended to sub-section (5) of Section 11 of the Act mandates that no appeal shall be disposed of by the appellate authority without affording an opportunity for hearing.

7. In the instant case, such an opportunity for hearing, as envisaged under sub-section (5) of Section 11 of the Act is not provided to the appellant. Therefore, the order passed by the appellate authority is in contravention of

proviso to sub-section (5) of Section 11 of the Act. Therefore, the said order cannot be sustained.

8. Accordingly, the following:

O R D E R

i) The order passed by the learned single Judge is set aside.

ii) The order passed by the first appellate authority dated 27.03.2006 is set aside.

iii) The matter is remitted back to the first appellate authority to re-do the matter in accordance with law, keeping in view the observations made by us in the course of the order.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

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